



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 14-02106
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

10/22/2015

Decision

HOGAN, Erin C., Administrative Judge:

On July 8, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. (The SOR was incorrectly numbered as 01-02106. The correct case number is 14-02106.) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006.

On August 17, 2014, Applicant answered the SOR and requested a decision based on the written record. Department Counsel issued a File of Relevant Material (FORM) on April 23, 2015. Applicant received the FORM on June 19, 2015. He had 30 days from his receipt of the FORM to submit additional information in response to the FORM. Applicant timely submitted a response to the FORM which is admitted as Item 6. Department Counsel did not object to Applicant's Response to the FORM. Department Counsel's response is admitted as Item 7. On September 16, 2015, the FORM was forwarded to the Hearing Office and assigned to me on September 22, 2015. Based

upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Rulings on Evidence

Item 3 of the FORM is a portion of the Report of Investigation (ROI) from Applicant's background investigation, specifically a summary of an interview of Applicant on June 4, 2012. DODD 5220.6, enclosure 2, ¶ E3.1.20 states, "An ROI may be received with an authenticating witness provided it is otherwise admissible under the Federal Rules of Evidence." (see ISCR Case No. 11-13999 (App. Bd., February 3, 2014)).

Although Applicant, who is representing himself, has not raised the issue via an objection, I am raising it *sua sponte* because Item 6 is not properly authenticated. Applicant's failure to mention this issue in his response to the FORM is not a knowing waiver of the rule because he more than likely was unaware of the rule. Waiver means "the voluntary relinquishment or abandonment – express or implied – of a legal right or advantage, the party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it." *Black's Law Dictionary*, 1717 (Bryan A. Garner, editor-in-chief, 9th ed., West 2009).

Department Counsel indirectly informed Applicant of the requirement under ¶ E3.1.20 of the Directive in Footnote 1 on pages 1-2 of the FORM. I cannot conclude Applicant expressly waived this rule. He did not mention Item 6 in his Response to the FORM. In accordance with the Directive, Enclosure 2, ¶ E3.1.20, Item 6 is not admissible and will not be considered in this Decision because the document is not authenticated.

Findings of Fact

In his response to the SOR, Applicant admits SOR allegation 1.a, and denies all remaining allegations.

Applicant is an employee of a DOD contractor seeking to obtain a security clearance. He has worked for his current employer since June 2008. He served on active duty in the United States Navy from April 1982 to April 1992. He received an Honorable Discharge. He has worked for several DOD contractors since 2002. He is twice divorced. The first divorce occurred in July 1998. The second divorce occurred in August 2014. He has one adult daughter from his first marriage. (Item 2; Item 6 at 3-5)

On March 13, 2012, Applicant submitted a security clearance application as part of a periodic background investigation related to his security clearance. In response to Section 26 – Financial Record, Applicant answered, "No," to questions regarding whether he had any of the following happen to him the past seven years: a lien placed against his property for failing to pay taxes or other debt(s); defaulted on a loan; bills or debts turned over to a collection agency; had any account or credit card suspended,

charged off, or cancelled for failing to pay as agreed; were currently over 120 days delinquent on any debt. (Item 2, Section 26). A background investigation revealed that Applicant had two tax liens and eight accounts placed for collection; a total approximate balance of \$31,017. (Item 4)

The debts include: a \$3,054 state tax lien from State A entered against Applicant in 2009 (SOR ¶ 1.a: Item 4 at 3); a \$1,568 credit card account placed for collection; (SOR ¶ 1.b: Item 4 at 8); a \$9,851 automobile loan placed for collection (SOR ¶ 1.c: Item 4 at 5 and 10); a \$3,999 student loan account that was past due over 180 days (SOR ¶ 1.d: No government exhibit provides evidence of this debt); a \$4,683 student loan account placed for collection (SOR ¶ 1.e: Item 4 at 9); a \$3,095 student loan account placed for collection (SOR ¶ 1.f: Item 4 at 9); a \$224 credit card debt placed for collection (SOR ¶ 1.g: Item 4 at 10); a \$3,066 state tax lien from State B entered against Applicant in 2003 (SOR ¶ 1.h: Item 4 at 3); a \$71 debt placed for collection (SOR ¶ 1.i: Item 4 at 4); and a \$236 cable television account placed for collection (SOR ¶ 1.j: Item 4 at 7)

In his response to the SOR, Applicant admits to the tax lien owed to State A, but is formally disputing the debt. State A asserts that he is a legal resident of State A. He states he has resided in State C for the past six years and has provided copies of W-2s showing that he has listed an address in State C. He believes he has a valid claim to dispute that he is not a resident of State A and should not have to pay state income tax to State A. Should his dispute not result in his favor, he will pay the amount of the tax lien. (Item 1 at 7; 10-13) He denies the \$3,066 tax lien owed to State B. He claims he never lived or worked in the State B. He thinks this may be an incorrect entry on his credit report. He contacted State B to inquire about the lien and is still waiting for a response. He claims the debts alleged in SOR ¶¶ 1.b, 1.c, 1.g, 1.i, and 1.j were his ex-wife's responsibility. He paid them to get the matter resolved. (Item 1 at 7-8)

Applicant does not recognize the student loan debt that was alleged to be \$3,999 past due over 180 days in SOR ¶ 1.d. He believes it may be his daughter's college loan, but he is not a co-signer or guarantor of her student loans. He pays most of her tuition directly to the school. The Government did not provide evidence of this debt in their FORM. However, the debt is listed on the most recent Equifax credit report provided by Applicant. It is listed as current. (Item 6 at 21) He denies that the student loans alleged in SOR ¶¶ 1.e and 1.f are delinquent. He researched the balance on the student loans and discovered they were current with a combined balance of \$5,817. (Item 1 at 7-8)

In his response to the FORM, Applicant provided a credit report which he states indicates all negative items have been paid off or are addressed. Several items that he disputed are no longer on his credit report. The current status of the delinquent accounts are as follows:

SOR ¶ 1.a: \$3,054 tax lien owed to State A. Under dispute, but not resolved. Applicant claims he is now a resident of State C. If his dispute is not ruled in his favor,

he intends to pay the tax debt. The tax lien remains on Appellant's credit report dated July 14, 2015. (Item 1 at 7, 10-13; Item 6 at 7)

SOR ¶ 1.b: \$1,039 credit card account placed for collection. Appellant claims this account was incurred by his ex-wife. He claims he settled the account for \$546.22. He did not provide documents verifying that the debt was paid. The debt is no longer listed on his current credit report. (Item 1 at 7; Item 5; Item 7 at 20)

SOR ¶ 1.c: \$9,851 automobile loan debt placed for collection. Appellant admits the loan was originally incurred by him. He recalls sending his wife at the time a check to pay off the automobile loan in full while he was on deployment. She did not pay off the loan. Instead, she moved out of the house and took the car with her. He was waiting for his now ex-wife to pay off the automobile loan. After being unable to locate her, he settled the loan for \$3,743.54 on August 11, 2014. The debt is resolved. (Item 1 at 7, 15-16)

SOR ¶ 1.d: Student loan account that is 180 days or more past due in the amount of \$3,999; account number 2844760581. Applicant disputes this account. The Government did not provide evidence of this debt in the FORM. The debt is listed in a recent credit report provided by Applicant, dated August 4, 2015. The account is current. Applicant pays as agreed. SOR ¶ 1.d is found for Applicant. (Item 6 at 21)

SOR ¶ 1.e and SOR ¶ 1.f: Two student loan accounts in the amounts of \$4,683 and \$3,095 that were placed for collection. Applicant disputes these accounts. He claims his student loan accounts are current and the total balance due on all of his loans, including principle and interest is \$5,817. He provided documentation verifying his student loans are current. (Item 1 at 8, 18-19)

SOR ¶ 1.g: \$224 account placed for collection. Applicant claims this is his ex-wife's debt. Although he admits it is an account that he opened for her to use. He provided proof that he paid this account on March 10, 2014. The debt is resolved. (Item 1 at 8, 20).

SOR ¶ 1.h: \$3,066 tax lien owed to State B. Applicant disputes this account. He claims he never lived or worked in State B. He believes this account was incorrectly reported on his credit report. He e-mailed State B to get more information about this debt. He was waiting for a response when he answered the SOR. The status of the dispute is unknown. However, the debt is no longer listed on his recent credit report. (Item 6 at 7-20).

SOR ¶ 1.i: \$71 account placed for collection. Applicant claims the debt was incurred by his ex-wife. He paid the debt off on March 7, 2014. The debt was actually \$64.01. (Item 7 at 8, 21)

SOR ¶ 1.j: \$236 cable television account placed for collection. Applicant claims the debt was incurred by his ex-wife under a joint account. He paid the debt on March 7, 2014. (Item 1 at 8, 22)

In his SOR response, Applicant provided a Personal Financial Statement. While deployed overseas, his total net monthly income was \$20,338. His net monthly expenses were \$2,230. He listed monthly debt payments of \$1,796. This is not accurate because he did not list his monthly payments towards his student loans. However, even when considering the student loan payments, Applicant has sufficient income left over each month to pay his bills. (Item 1 at 9) Applicant owns a sports bar in addition to his primary employment. A good friend manages the sports bar while he is deployed.

Applicant is alleged to have deliberately falsified his response to section 26 on his security clearance application because he answered “No” in response to questions about his delinquent debts. In his response to the SOR, Applicant denies deliberately falsifying his security clearance application. He did not explain the basis for doing so, but did underline the words “and deliberately” and wrote “I DENY” near the words. It is concluded that he did not list the debts because of oversight. (Item 1 at 6)

Applicant requests that his 10 years of active duty service in the Navy be considered. He has worked for the defense industry since 2002. He worked for a defense contractor from 2002 to 2008, before transferring to his current employer. Since October 2008, he has served on many long-term deployments with his current company. He estimates he has been deployed 59 months out of the 78 months he has worked for his current employer. He hopes to work another 12 to 18 months until his daughter graduates from college. He then plans to retire and start a second business. Applicant says he is very patriotic and is extremely proud to serve and support his country and the men and women of the military with whom he works with on a daily basis. (Item 6 at 2)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered when determining an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F - Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions that could raise security concerns. I find AG ¶ 19(a) (an inability or unwillingness to satisfy debts); and AG ¶ 19(c)

(a history of not meeting financial obligations) apply to Applicant's case. Applicant incurred several delinquent debts which were placed for collection. He was also late making payments towards his student loans. He also incurred two tax liens that were placed against him by State A and State B. Both AG ¶19(a) and AG ¶19(c) apply.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

AG ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment);

AG ¶ 20(b) (the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances);

AG ¶ 20(c) (the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control);

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts); and

AG ¶20(e) (the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue).

AG ¶ 20(a) applies because Applicant resolved most of his delinquent debts. He is current on his student loan accounts. The one account that remains unresolved on his credit report is the \$3,054 state tax lien owed to State A. Applicant is in the process of disputing State A's claim that he is a resident. If he does not prevail, he will pay the debt. He has sufficient income to pay the debt.

AG ¶ 20(b) applies, in part, because Applicant's ex-wife incurred the debts in SOR ¶¶ 1.b, 1.c, 1.g, 1.i, and 1.j while married to Applicant. Applicant paid the debts after being unsuccessful in getting his ex-wife to pay them. Under the circumstances, he acted in a responsible manner.

AG ¶ 20(c) only partially applies because there is no evidence that Applicant has attended financial counseling. However, his financial situation is under control because he resolved most of the delinquent debts and is capable of resolving the debts he is disputing if the dispute is not resolved in his favor.

Applicant provided proof that he resolved the debts alleged in SOR ¶¶ 1.c, 1.g, 1.i, and 1.k. He said the debt alleged in SOR ¶ 1.b is resolved, but did not provide documentation to corroborate this assertion. However, it is no longer listed on his credit report, so SOR ¶ 1.b is considered resolved. He provided proof that his student loan accounts are current. He is formally disputing the tax liens entered against him by State A and State B. It is noted that the State B tax lien is no longer on his credit report. He has not received a final ruling as to whether State A finds him to be a resident. Should he not be successful in his appeal, his income is sufficient to pay the tax lien owed to State A. Applicant made a good-faith effort to resolve his delinquent accounts.

AG ¶ 20(e) partially applies with respect debts alleged in SOR ¶¶ 1.a and 1.h. However, Applicant did not provide an update regarding the status of either dispute.

Overall, Applicant's efforts to resolve his delinquent debt mitigated the financial considerations concern.

Guideline E – Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following disqualifying condition potentially applies to Applicant's case:

AG ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities).

I cannot conclude Applicant deliberately omitted his delinquent debts and tax liens in response to section 26 on his e-QIP application dated March 13, 2012. Applicant has been deployed to overseas locations consistently since 2008. His failure to list his delinquent debts were the result of oversight as opposed to an intentional omission. He cooperated fully with the government once he learned of the delinquent accounts.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's past active duty service in the Navy as well as his extensive employment history with DoD contractors since 2002. Applicant did not intend to falsify his security clearance application. He has taken significant action towards resolving his delinquent debt.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a – 1.j:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge